

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF TOWN OF CHAPEL HILL, NORTH CAROLINA

These Comments are filed by the Town of Chapel Hill, North Carolina, in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the Town of Chapel Hill believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Chapel Hill, North Carolina, is a town with a population of 51,485. Our franchised cable provider is Time Warner Cable. Our community has negotiated cable franchises since 1979.

Our Current Franchise

Our current franchise began in 1996 and expires in 2016. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the Town of Chapel Hill in the amount of five percent (5%) of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide to each of its Basic Cable Service Subscribers reception of at least four (4) access channels which are used solely for non-commercial public, governmental and educational purposes. We currently have three (3) channels devoted for this purpose.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: A Supplemental Public Access Rate Charge of 76 cents per month per subscriber generates about \$118,000 to help cover wages, equipment, rent and other costs for management and operation of public access television.

Our franchise contains the following requirements regarding emergency alerts: The cable company provides the System capability to transmit an emergency alert signal to all participating subscribers, in the form of an audio override capability to permit the Town to interrupt and cablecast an audio message on all channels that the cable company may lawfully override simultaneously in the event of disaster or public emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. The cable operator is required to maintain a local office or offices with regular office hours and telephone availability through a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven (7) days a week. Customer service center and bill payment locations are to be open at least during Normal Business Hours and are to be conveniently located.

Standard Installations are to be performed within seven (7) business days after an order has been placed. Standard Installations are those that are located up to 125 feet from the existing distribution System (as provided in federal standards).

The cable company is required to begin working on Service Interruptions promptly and in no event later than 24 hours after the interruption becomes known. The company is required to provide written communications with subscribers describing the following: Products and services offered; Prices and options for programming services and conditions of subscription to programming and other services; Installation and service maintenance policies; Instructions on how to use the Cable Service; Channel positions of programming carried on the System; and Billing and complaint procedures, including the address and telephone number of the Town's cable office.

The cable operator is required to conduct a random survey of a sampling every two years of its subscribers within Chapel Hill either by written questionnaire or telephone interview. Each survey is furnished to the Town for review and comment. The survey measures areas of subscriber satisfaction with signal quality; response to subscriber complaints; billing practices; regulated program services; and installation practices.

Our franchise requires that the cable operator shall design, construct and maintain the Cable Television System to have the capability to pass every dwelling unit in the Town, subject to any contrary provisions of the Franchise Agreement Ordinance regarding extensions of service. After service has been established by activating trunk and/or distribution cables for any Service Area, the cable operator shall provide cable television service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the cable operator is able to secure all rights-of-way necessary to extend service to such Subscriber within such thirty (30) day period on reasonable terms and conditions.

Our franchise contains the following reasonable build schedule for the cable operator: Build to 20 homes per mile with a cost share provision should there be less than 20 homes per mile.

In order to assure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: Time Warner has upgraded the cable system to provide high speed internet, telephone and cable television service. Our agreement provides that Time Warner maintain a state-of-the-art system and is based on economic feasibility of any upgrade.

Our franchise contains a “most-favored-nations” provision which states the following: To assure that the Cable System reflects the general cable industry state-of-the-art, Chapel Hill and Time Warner Cable agree to utilize the cable systems in the nearby cities of Raleigh and Durham for comparison. Time Warner agrees that it will include new services and technologies offered in Raleigh and Durham into the Chapel Hill System where such services and technologies are compatible and economically feasible.

Our franchise contains the following insurance and bonding requirements: the cable provider maintains public liability insurance in the amount of \$1 million for person and \$3 million for two or more persons in any one occurrence; the company indemnifies the Town and agrees to hold responsibility for all claims for payment from its employees; a Security Fund established at the offset of the franchise sets aside a \$500,000 construction bond for upgrade of the system and a \$10,000 letter of credit. In the event the Town was to find unexcused violations of the system requirements, damages may be assessed from the Security Fund of up to \$100 per day for the first 90 days and up to \$500 per day thereafter.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. The cable operator must follow normal permit and bonding requirements made of all contractors working within the Town's rights-of-way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The Town has the right to inspect any facet of construction of the cable system located within the Town; has the right to audit franchise fees and books and records necessary to insure compliance with the franchise agreement; and has a penalty clause in which there is a formal appealable process.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: the agreement is governed by and construed in accordance with Federal law and with the laws of the state of North Carolina. In the event that any law is enacted by any agency with jurisdiction over the franchise, other than the Town, which changes the authority of the Town to regulate the services of the cable operator, the Town may begin a process of review and modification of the franchise. The Town may request evaluation and review sessions concerning rates, channel capacity, system performance, programming, PEG access, municipal uses of cable, subscriber complaints, judicial rulings, FCC rulings and other topics deemed relevant at any time during its agreement with the cable operator. If the Town reasonably believes there is evidence of inadequate technical performance of the cable system, the Town may propose modifications to the system or the franchise and seek to reach agreement on such change or amendment.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: We hold public hearings, which are noticed in advance in the local media, to receive comments from the community on cable matters. Cable company representatives are invited to hear and respond to citizens. In the event any law, regulation or court or administrative ruling is issued which changes the Town's regulatory authority, the Town and franchise holder agree to implement the periodic review provisions of the franchise and to act in good faith to reach agreement to implement appropriate changes to the franchise. Any change to the franchise would be considered by our elected officials in an open public forum to provide an opportunity for broad citizen input. Annual reports, correspondence and other materials between the Town and the cable provider are open for public inspection and most are provided on the Town website.

Competitive Cable Systems

Our community has not been approached by a competitive provider to provide service.

Our community:

- has not denied any provider the opportunity to serve in our community.
- does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in the Town of Chapel Hill. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Town of Chapel Hill therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Town of Chapel Hill

By: W. Calvin Horton, Town Manager
Town of Chapel Hill
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov